



POLICE DEPARTMENT CITY OF NEW YORK

February 8, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Staple
Tax Registry No. 943844
Housing Police Service Area 7
Disciplinary Case No. 2015-13909

Charges and Specifications:

1. Said PO DANIEL STAPLE, on or about June 3, 2014, at approximately 09:30 hours, while assigned to Police Service Area 7 and on duty, [REDACTED], did wrongfully use force against Person B, in that Officer Staple used a chokehold against Person B.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Heather Cook, Esq.

For Respondent: John Tynan, Esq.

Hearing Date:

December 18, 2015

Decision:

Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 18, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

On June 3, 2014 at about 0930 hours, police responded to a fire [REDACTED]. [REDACTED] Person A was briefly detained as a suspect for setting the fire, while Respondent interviewed a potential witness. When that witness was unable to identify the suspect, Person A was brought inside the building by Sergeant Jordan Castro to be released away from the angry crowd that had gathered in front of the building. Once inside, Person A pointed out Person B as the person who had robbed him a couple of days earlier. Before Sergeant Castro could grab him, Person B ran out of the building toward Respondent. Sergeant Castro yelled out for Respondent to stop Castro, and Respondent tripped the fleeing suspect to the ground. With Person B on his hands and knees facing down, Respondent jumped on his back and grabbed hold of Person B until other officers could arrive to assist. At issue is whether the preponderance of the credible evidence has proven that Respondent placed Person B in a chokehold. I find that it has not.

Section 203-11 of the Patrol Guide, which deals with the use of force by members of the service, emphatically declares that EXCESSIVE FORCE WILL NOT BE TOLERATED. The section provides further guidance by stating that members of the Department will NOT use

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chokeholds. A chokehold “shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.” This definition of what constitutes a chokehold focuses on the conduct itself rather than the intention of the officer. If an officer exerts pressure on a person’s throat area in the manner proscribed, that officer will have run afoul of the guidelines, and be subject to discipline.

Person B did not appear to testify at the trial. Instead, CCRB introduced into evidence a recording of Person B’s CCRB interview from June 20, 2014 and the accompanying transcript (CCRB Exs. 1A and 1B), as well as the recordings and transcripts of interviews with two additional witnesses: Person C (CCRB Exs. 2A, 2B, and 2C) and Person D (CCRB Exs. 3A and 3B). Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statements of the civilian witnesses and reviewed the accompanying transcripts.

In Person B’s statement, the beginning of which was not recorded due to a recording malfunction, Person B briefly described his interaction with Respondent, providing minimal detail. Person B claimed that Respondent squeezed his legs around Person B’s waist, and placed his arm on Person B’s neck so that he started to suffocate. Person B then moved Respondent’s hand away from his neck. (CCRB Ex. 1A, 1:07 mark; CCRB Ex. 1B, pp. 2-3) Person B went on to provide a much lengthier description of how additional force was then used against him by other officers; one

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officer struck Person B in the head with a baton, causing him to lose consciousness. Person B acknowledged that he was upset with police for releasing the fire suspect Person A, and refused to be handcuffed for the robbery arrest. (CCRB Ex. 1A, p. 4)

During her CCRB interview, Person C, Person B's girlfriend, stated that the officer grabbed her boyfriend "by the neck." (CCRB Ex. 2C, p. 27) Person C believed Person B was "almost out of air", and she told Respondent to stop, trying to persuade the officer not to hit Person B and to take his hands off Person B's neck. (CCRB Ex. 2C, pp. 28-29) Person C repeatedly had to tell Person B to calm down and let the officers arrest him. (CCRB Ex. 3C, p. 26). During the ensuing struggle with police, Person B sustained bleeding from his head and appeared unconscious. (CCRB Ex. 3C, pp. (CCRB Ex. 3C, pp. 31-32) Like Person B, Person C was upset with police for releasing Person A, after Person C's daughter was unable to identify him for starting the fire. (CCRB Ex. 3C, p. 24)

Person D, who had no relationship with any of the people involved, told the CCRB that she observed part of the hour-long incident from her second story window. She acknowledged that she did not see the beginning of the incident; when she first looked out her window after hearing a commotion, she saw a man moving and squirming his body as police attempted to restrain him. (CCRB Ex. 3B, pp. 3, 9) Person D briefly mentioned seeing one officer restraining the man by his neck, while another officer placed his knee in the man's back, and that the man was already handcuffed at the time (CCRB Ex. 3B, pp. 10-11), a description somewhat at odds with those provided by other witnesses.

Respondent testified that while he was outside the building, he saw Person B running in his direction and heard Sergeant Castro shouting at Respondent to detain him. (Tr. 25) At the time, Respondent already was familiar with the robbery complaint for which Person B was being stopped. (Tr. 26) Respondent reasonably relied upon his fellow officer and attempted to stop

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Person B. They collided and both fell to the ground, at which point Respondent jumped on Person B's back with the goal of detaining the suspect until other officers could assist in the apprehension. (Tr. 30-31)

Respondent testified that he did not employ a chokehold; rather, he used what he described as a "restraining technique" in order to detain Person B. (Tr. 31) Respondent explained that he has received training in wrestling: he wrestled for three years in high school and one year in college, and coached wrestling at White Plains High School. Since Person B was a bigger man than Respondent (Tr. 16, 29), Respondent wrapped his legs around Person B's waist in an attempt to hold him still. At the same time, Respondent placed his right arm over Person B's right shoulder, and his left arm under Person B's left armpit, and attempted to clasp his hands together in order to secure Person B. (Tr. 31-32, 44, 48-49) At most, Respondent's right arm may have made incidental contact with the side of Person B's neck, but such contact did not constitute a chokehold as defined. (Tr. 51) Indeed, Respondent explained that based on his training, he made a conscious effort to avoid choking Person B. (Tr. 33-34) The two men then rolled over so that Respondent's back was on the ground. They remained in this position for about 20 or 30 seconds, until Sergeant Castro and Officer Perez arrived to handcuff the suspect, and Respondent released him. (Tr. 34)

After assessing the credibility of all the witnesses, this tribunal is not persuaded that Respondent used a chokehold. I did not find the hearsay statements of Person B or Person C to be sufficiently reliable. Both Person B and Person C admitted they were upset with the police for their handling of the incident, which may have affected their statements to the CCRB. Moreover, the witnesses described Person C as Person B's girlfriend, raising the possibility of witness bias; this issue might have been explored more thoroughly with the benefit of live

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testimony. The third civilian witness, Person D, was watching intermittently from a second-floor window, and her details were inconsistent with those of other witnesses.

Respondent, meanwhile, came across as candid and conscientious in his description of the incident. In contrast with the CCRB witnesses, who did not appear and could not be assessed in person, this tribunal was able to watch Respondent as he carefully demonstrated the restraining technique he used, and explained how that technique was a product of his training. Respondent also was aware of the Department's guidelines prohibiting the use of chokeholds, and took great care to avoid doing anything that would interfere with Person B's ability to breathe. (Tr. 33) I credit his insistence that he did not use a chokehold against Person B – that he did not apply pressure to Person B's throat or windpipe area, and that he did nothing which may have prevented or hindered Person B's breathing or reduced his intake of air. (Tr. 54-55)

This tribunal is mindful of the serious nature of chokehold offenses, which is underscored by the Patrol Guide's emphatic prohibition against their use. However, after considering the scant hearsay evidence of the three civilian witnesses, as well as Respondent's extremely credible testimony, this tribunal is not persuaded that the record has established, by a preponderance of the credible evidence, that Respondent used a prohibited chokehold in this case. Accordingly, I find Respondent Not Guilty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAR 22 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER